IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

RFA.No. 149 of 2007()

(OS.46/2004 of PRINCIPAL SUB COURT,KOCHI)
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APPELLANTS/DEFENDANTS:
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1. KERALA STATE ELECTRICITY BOARD,
   VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. THE EXECUTIVE ENGINEER,
   KERALA STATE ELECTRICITY BOARD,
   ELECTRICAL MAJOR SECTION, PALLURUTHI.

3. ASSISTANT ENGINEER,
   KSEB ELECTRICAL SECTION, KANNAMALY.

4. OVERSEER, KSEB ELECTRICAL SECTION,
   KANNAMALY.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS/PLAINTIFFS:
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1. THAYAMMA JOSEPH,
   W/O.LATE JOSEPH ANTONY, AGED 47 YEARS,
   RESIDING AT PADINJAREVEETTIL, CHERIYAKADAVU,
   KANNAMALY, PALLURUTHY VILLAGE, KOCHI TALUK,
   KOCHI-682 018.

2. SEN MICHAEL, S/O.LATE JOSEPH ANTONY,
   AGED 23 YEARS, RESIDING AT PALLURUTHY VILLAGE,
   KOCHI TALUK, KOCHI-682 018.

3. AGNES JINY, D/O.LATE JOSEPH ANTONY,
   AGED 21 YEARS, RESIDING AT PADINJAREVEETTIL,
   CHERIYAKADAVU, KANNAMALY, PALLURUTHY VILLAGE,
   KOCHI TALUK, KOCHI-682 018.

4. MARY RENY, D/O.LATE JOSEPH ANTONY,
AGED 18 YEARS, RESIDING AT PADINJAREVEETTIL,
CHERIYANKADAVU, KANNAMALY, PALLURUTHY VILLAGE,
KOCHI TALUK, KOCHI-682 018.

BY ADV. SRI.K.C.ELDHO

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

R.F.A.No. 149 of 2007 - C

Dated this the 5th day of December, 2007

J U D G M E N T

Raman,J:

This is an appeal against the judgment and decree in O.S.No.46 of 2004 on the file of the Principal Sub Court, Kochi. The defendants are the appellants. The suit is for compensation. One Joseph Antony died due to electrocution. He was a fisherman and the sole breadwinner of the family consisting of his wife and children who are the plaintiffs. The plaintiffs 2 to 4 are students depending on the deceased father for their education. The deceased used to go for fishing in the early morning. In the Chellanam-Thoppumpady Road, there is an electric post KN 91/2 through which a 11 K.V electric line was passing. It touched a coconut tree situated in the adjacent property for about six months. The electric line was in a dangerous condition likely to break down at any time. The residents of the locality brought out to the notice of the Electricity Board many times about this condition, but no action was taken. The Overseer of the

Board is a resident of the locality. He has personal knowledge about the dangerous condition of the electric line. On 20.11.2001, at about 3.30 a.m. while the deceased was proceeding for his avocation as usual, he happened to step on the 11 K.V.electric line which was broken down due to wilful negligence, laches and carelessness of the defendants and they did not take any precautionary measures to prevent the happening. The defendants failed to perform their duties to conduct periodical inspection and maintenance. A crime was also registered under Section 304A of the Indian Penal Code against the Electricity Board. Ext.A5 enquiry report by the Deputy Chief Electrical Inspector also reveals that the death occurred due to negligence of the defendants. It is alleged that there was an attempt to destroy the evidence of negligence by cutting down and removing the coconut trees. Defendants 2 to 4 are the employees of the first defendant and therefore, for penal act or omission on the part of them, the first defendant

is vicariously liable to compensate the plaintiffs. The deceased was 50 years. At the time of his death, he was hale and healthy. In the normal course, he would have lived up to the age of 70 and he had an average income of Rs.4000/- per month. The plaintiffs contended that they are entitled for an amount of Rs.7,10,000/- towards compensation on various heads, but, since the plaintiffs are not in a position to pay court fee for the entire amount, they limit their claim for a sum of Rs.2,50,000/-. They also claim interest at 9%. After issuing lawyer notice, when the amount was not paid, a suit was filed.

2. Earlier an original petition O.P.No.25838 of 2002 had been filed before this Court and there was a direction to the defendants to consider and finalise the quantum of compensation payable to her, in the light of Ext.A5 report of the Deputy Chief Electrical Inspector. Thereafter, the first defendant offered an amount of Rs.50,000/- only as ex-gratia payment. According to the plaintiffs, the amount offered is a paltry sum,

inadequate to compensate the loss sustained by the plaintiffs.

3. The appellants/defendants contended that the suit is barred by limitation. The second plaintiff is an employee and the third plaintiff is a married daughter. Hence the allegation that plaintiffs 2 to 4 are students is denied so also the deceased father was the sole breadwinner of the family. It is also denied that 11 K.V.line was drawn passing through electric post No.KN 91/2 situated on the Chellanam-Thoppumpady Road itself. They also denied the allegation that the electric line was rubbing on a coconut tree or that there was any complaint or intimation to the defendants as alleged on previous occasion. They also denied that the fourth respondent is a resident of the local area. They also denied that the electrocution was caused from a snapped conductor which, according to them, happened due to wilful negligence, laches and carelessness of the defendants. According to them, periodical inspection

and maintenance was done by the Electricity Board and their employees. The snapped conductor is situated on the sea-shore area and heavy wind, rain, thunder and lightening during the relevant time caused the rubbing of the coconut tree and falling of green palm leaves and coconut bunches standing outside the clearing area on the said conductor which according to them resulted in snapping of the conductor. Subsequently, snapped wire got electric shock from lightning. Therefore, according to them, there was no negligence. They also contend that the damages claimed are excessive.

4. Necessary issues were raised for trial. The evidence consists of oral testimony of Pws.1 to 3 and documentary evidences, Exts.A1 to A3 marked on the plaintiffs' side. No exhibit was marked on the side of the defendants nor has anybody been examined. There was thus total lack of evidence on their part. The court below found on issue No.1 that the suit is not barred by limitation. There is no serious challenge to the said

finding.

5. As per issue No.2, the court below found that the plaintiffs are having limited their claim for compensation to Rs.2,50,000/- and after adjusting Rs.52,000/- already paid, they are entitled to get a balance amount of Rs.1,98,000/- with interest at 9% from the date of decree till realisation. The court below discussed the entire evidence in the matter in para 10 of its judgment. The place of occurrence is a sea-shore and the electric line drawn through the post is 11 K.V.line. Therefore, it is potentially of dangerous dimension and hence it supplies an added duty to take more safety measures to prevent the escape of such energy to see that the wire snapped would not remain live on the road as users of such road would be under peril. If any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted. The case of the defendants was that when a wire snapped, the fuse in the nearby post will be burnt

and electric supply will be cut and since there was no supply in the snapped wire, the possibility of the supply of electricity in the snapped wire could be through lightning, but to prove such a version, the defendants did not adduce any evidence to show that there was any such fuse wire which was burnt due to the snapping and that electricity passed due to lightning. The burden to show that precautionary measures were taken lies on the defendants that there is a mandatory duty on a public authority while undertaking the activities of such hazardous nature to take such safeguard measures so as to prevent any such untoward incident and in time of such cases, the doctrine of 'strict liability' will apply. The fact that the deceased died due to electrocution is amply proved on evidence. The fact that the plaintiffs are legal heirs is also beyond dispute. Ext.A5 is a report prepared by the Deputy Chief Electrical Inspector after conducting an enquiry in the matter. It is the independent authority whose report was considered by

the court below. As per Ext.A5 report, there was negligence on the part of the defendants. No evidence at all was adduced by the defendants to disprove the contents in the report. The plea raised by the defendants that there was no negligence on their part is thus not substantiated by adducing any evidence. The Supreme Court in **M.P.Electricity Board** v. **Shail Kumar** (2002(1) KLT 480) formulated seven exceptions to the doctrine of strict liability. But, none of them are proved to exist in this case. Ext.A13 Pass Book shows that the deceased was a member of the Kerala Fishermen Welfare Board. Exts.A1 is the Post-mortem Certificate and A3 is the First Information Report that the deceased was aged 51 at the time of accident, but electrocution happens on 20.11.2001. The average income of the deceased was Rs.4000/- per month, though no documentary evidence as such was produced. Following the decision of the Apex Court reported in **Lata Wadhwa and others** v. **State of Bihar and**

others (AIR 2001 SC 3218) wherein it was held that even in the case of non-earning house wives, notional income can be fixed, considering the services rendered by such house wives though they are not employed under somebody. The court below therefore estimated the income of the deceased fisherman as Rs.3000/- since admittedly he is a fisherman and he has a family to be maintained and there is oral evidence to support the plea as raised. We do not find that such estimation is in any way excessive. After earmarking one-third of the amount to his personal expenditure, two-third alone was contributed to his family. Loss of income was thus estimated to Rs.24,000/-. Accordingly, the compensation worked out to Rs.3,14,000/-. Though the plaintiffs were entitled to more amount than claimed, since they paid court fee only for an amount of Rs.2,50,000/- as claimed, the decree was limited to such amount.

6. Considering the totality of facts and circumstances of the case and based on evidence on

record, it cannot be said that the compensation awarded is excessive. Only normal rate of interest 9% has been granted from the date of decree till realisation. Whatever amount that has been paid earlier has to be deducted before granting the decree. In such circumstances, we find no merit in this appeal and the same is dismissed.

7. However, it it submitted by learned counsel for the respondents that pursuant to the decree passed, the appellants have deposited the entire decree amount. We record the same.

The appeal fails and is accordingly dismissed.

P.R.RAMAN,
Judge

V.K.MOHANAN,
Judge

Mbs/

V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007